Upon his bankruptcy the plaintiff petitions for $\frac{100}{280}$ of these shares. *Held*, that the plaintiff may recover. *Duel* v. *Hollins*, 36 Sup. Ct. Rep. 615.

By the weight of authority a customer has a property right in stock purchased on credit for him by a stockbroker. *Richardson* v. *Shaw*, 209 U. S. 365. See 19 HARV. L. REV. 529. *Contra*, *Covell* v. *Loud*, 135 Mass. 41. But the stock is considered fungible and the broker is only required to keep for the customer sufficient stock of the same kind. *Caswell* v. *Putnam*, 120 N. Y. 153, 24 N. E. 287; *Richardson* v. *Shaw*, *supra*. Where one who holds property subject to the rights of another wrongfully disposes of it and later reacquires it, he of course still holds it subject to those rights. *Williams* v. *Williams*, 118 Mich. 477, 76 N. W. 1039; *Church* v. *Ruland*, 64 Pa. St. 432, 444; *Schutt* v. *Large*, 6 Barb. (N. Y.) 373, 380. Now the same is held where the wrongdoer disposes of fungible property — stock, for example — and later acquires similar property. *In re Brown*, 171 Fed. 254. These decisions are sometimes based on a presumption that the acquisition was for the purpose of restitution. But it is often difficult to justify such presumption. Further, it is hard to see on what principle the law gives legal effect to this intention if it is presumed. A less artificial and more satisfactory explanation would seem to be a constructive trust, imposed by law on the wrongdoer when he is capable of making specific reparation for his wrongful disposal of property. This broader principle would give a right in a case, like the principal case, where circumstances rebut the presumption of an intent to restore.

CARRIERS — PERSONAL INJURIES TO PASSENGERS — DUTY TO PROTECT FROM ASSAULT. — The plaintiff, a negro, while waiting in a depot to take passage on a train, was assaulted by the town marshal, who was running all negroes out of town. The station agent, who knew all of the circumstances, made no attempt whatever to interfere. The plaintiff sues the railway. *Held*, that the defendant is not liable. *Fennell* v. *Atchison, Topeka & Santa Fe R. Co.*, 158 Pac. 14 (Kan.).

The duty of carriers to protect their passengers from assault cannot be questioned. *Seawell* v. *Carolina Central R. Co.*, 132 N. C. 856, 45 S. E. 850; *Texas, etc. R. Co.* v. *Jones*, 39 S. W. 124 (Tex. Civ. App. 1897). See *Southern R. Co.* v. *Hanby*, 183 Ala. 255, 259, 62 So. 871, 873. This applies even to assaults and arrests made by officers of the law if the carrier has notice that the conduct of the officer is wrongful. See 2 HUTCHINSON, CARRIERS, § 987. But since carriers are not insurers of safe passage, it must appear, in order to establish liability, that the assault was forseeable and could have been prevented. See *Pittsburg, etc. R. Co.* v. *Hinds*, 53 Pa. 512, 515. See 25 HARV. L. REV. 470. The principal case assumed that a lesser duty is owed to the populace waiting in the station for trains than to those on board trains. See 2 HUTCHINSON, CARRIERS, § 989. But the rule is well settled that persons entering depots for the purpose of taking passage are passengers. *Exton* v. *Central, etc. R. Co.*, 62 N. J. L. 7, 42 Atl. 487. See 2 WOOD, RAILROADS, § 298.

CARRIERS — SLEEPING CARS — LIABILITY OF CARRIER FOR PULLMAN EMPLOYEE'S TORT TO TRESPASSER. — The plaintiff's husband, who was trespassing on a Pullman car, was impelled by the threatening conduct of a Pullman conductor to jump off the train, and sustained fatal injuries. The plaintiff sues the railroad. *Held*, that the railroad is not liable, as the conductor was not its servant. *Louisville & Nashville R. Co.* v. *Marlin*, 186 S. W. 595 (Tenn.).

It is well settled that Pullman employees are not, except under special arrangements, general servants of the railroad. *Robinson* v. *Baltimore & Ohio R. Co.*, 237 U. S. 84; *cf. Oliver* v. *Northern Pacific R. Co.*, 196 Fed. 432. Yet railroads are often held liable to passengers for acts of Pullman employees which touch the railroad's duty. *Pennsylvania Co.* v. *Roy*, 102 U. S. 451;

Campbell v. *Seaboard Air Line Ry.*, 83 S. C. 448, 65 S. E. 628. The courts uniformly reason that for this purpose the Pullman employees are temporary servants of the railroad. See *Pennsylvania Co.* v. *Roy*, 102 U. S. 451, 457. This is, at best, a fiction. The true reason for the liability rests in the fact that the carrier's duty of proper conveyance is non-delegable. See *Dwinelle* v. *New York, etc. R. Co.*, 120 N. Y. 117, 123, 24 N. E. 319, 321; *Barrow S. S. Co.* v. *Kane*, 88 Fed. 197, 199. A breach of it, therefore, even though committed by the servant of an independent contractor, renders the railroad liable. Some make this duty not only non-delegable, but even absolute in respect of the wilful torts of employees. *Jackson* v. *Old Colony Street R. Co.*, 206 Mass. 477, 92 N. E. 725. See 6 LABATT, MASTER AND SERVANT, 2 ed., § 2447 ff. But obviously a non-passenger cannot invoke this extraordinary liability, since it rests upon the relationship of carrier to passenger. *Blake* v. *Kansas City Southern Ry. Co.*, 38 Tex. Civ. App. 337, 85 S. W. 430.

CONFLICT OF LAWS — JURISDICTION FOR DIVORCE — FOREIGN DECREE AGAINST A NON-RESIDENT. — The plaintiff's wife had divorced a former husband in Nevada, the court there taking jurisdiction by the wife's residence and constructive service on the husband. The plaintiff now sues in New York to annul his marriage on the ground that his wife's previous divorce decree was void. *Held*, that the burden is on the plaintiff to establish that the husband in the former action was a resident of New York when the decree was rendered. *Kaufman* v. *Kaufman*, 160 N. Y. Supp. 19 (Sup. Ct.).

New York has long contended that divorce proceedings are *in personam*. See *Lynde* v. *Lynde*, 162 N. Y. 405, 412, 56 N. E. 979, 981. It has therefore refused to give effect to a foreign court's decree of divorce against a non-resident of the foreign state not personally served. *Winston* v. *Winston*, 165 N. Y. 553, 54 N. Y. Supp. 298. See 15 HARV. L. REV. 66. The Supreme Court, while considering such divorce binding in the foreign state, has held that New York's disregard of such decree was not a violation of the "full faith and credit" clause. *Haddock* v. *Haddock*, 201 U. S. 562. The majority of the states, however, deeming divorce to be an action *in rem*, hold, if one party be domiciled within the state the other, though non-resident, may be served constructively. *Loker* v. *Gerald*, 157 Mass. 42, 31 N. E. 709; *In re James Estate*, 99 Cal. 374, 33 Pac. 1122; *Dunham* v. *Dunham*, 162 Ill. 589, 44 N. E. 841. Some of the New York courts have made an attempt by subtle distinctions to more closely conform to these decisions. *North* v. *North*, 47 Misc. 180, 93 N. Y. Supp. 512, affirmed 111 App. Div. 921, criticised, *Catlin* v. *Catlin*, 69 Misc. 191, 193, 126 N. Y. Supp. 350, 351. And it must be obvious that even the New York decisions, requiring, as they do, domicile of the libellant to create jurisdiction, cannot consider divorce as *in personam* in the true sense of the word. See J. H. Beale, Jr., "Constitutional Protection of Decrees of Divorce," 19 HARV. L. REV. 586, 590. Indeed, the principal case, by giving extraterritorial effect to a decree of divorce rendered against a non-resident defendant served by publication, unless such defendant be a resident of New York, seems to be an acknowledgment of that fact. Certainly any decision which tends to bring the New York law on this subject into conformity with that of the majority of states, must be desirable. But it is difficult to see on what principle the present decisions of the New York courts can possibly be based. But see *Percival* v. *Percival*, 106 App. Div. 111, 118, 94 N. Y. Supp. 909, 913.

CONSTITUTIONAL LAW — POWERS OF LEGISLATURE: TAXATION — CONSTITUTIONALITY OF AN INCOME TAX ON A CORPORATION ENGAGED IN EXPORT TRADE. — The plaintiff corporation seeks to recover the tax levied by the Federal Government on that part of its income derived from export trade, asserting the levy to be unconstitutional as a tax on exports. *Held*, that the tax